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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 498

ADELHEIT VON HARDENBERG, IRMGARD VON ALTEN and IRMGARD VON SCHILLER,

Petitioners,

vs.

ROBERT F. KENNEDY, Attorney General of the United States,

Respondent.

Petitioners' Reply.

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Respondent has restated the issue in broad terms, namely, "whether future interests in real property are subject to vesting by the Attorney General under Section 7(c) of the Trading With The Enemy Act" (Respondent's brief, page 2). Petitioners are willing to accept Respondent's restatement of the issue presented here. While Respondent does not say so in so many words, it appears clear from his brief in opposition that *this Court has never ruled upon this important issue.*

All of the cases cited by Respondent (brief, page 8) are opinions of intermediate and trial courts in the federal system, or state reviewing courts. In most of those cases, the issue raised here was not presented to or ruled upon by the court; rather, the court assumed the power to vest future interests and adjudicated other issues raised by the parties. Petitioners cited most of those cases in their opening brief (pages 10 and 11) to demonstrate that this and related questions have been the subject of much litigation in recent years.

Respondent relies upon several out-of-context quotations from opinions of this Court (brief, p. 7) in an effort to demonstrate that all kinds of property, including future interests in real property, have been held to be subject to the vesting power. In answer to Petitioners' contention that future interests were not intended to be subject to vesting because they present no danger of use by the enemy against our government, Respondent argues (brief, pages 7-8) that one of the purposes of the passage of the Trading With the Enemy Act was to provide funds for reparations to citizens of the United States, hence whether the interest comes into the possession of the enemy alien during the war is immaterial.

When this Court's prior references to the Trading With the Enemy Act are placed into their actual context, it is seen that the purposes of the Act were and are to prevent the enemy during time of war from using the property against the United States, and to permit this country to use the property in furtherance of our war effort. These purposes have no relation to interests in real property which have not yet come into possession and enjoyment.

Respondent quotes eight words from *Silesian-American Corp. v. Clark*, 332 U.S. 469 (1947). (Brief, page 7.) The *full* quotation appears at pages 475 to 476:

> ". . . There is no doubt but that under the war power, as heretofore interpreted by this Court, the United States, acting under a statute, may vest in itself the property of a national of an enemy nation. Unquestionably to wage war successfully, the United States may confiscate enemy property. *United States v. Chemical Foundation*, 272 U.S. 1, 11. Nor can there, we think, be any doubt that any property in this country of any alien may be summarily reduced to possession by the United States in furtherance of the war effort. Every resource within the ambit of sovereign power is subject to use for the national defense. . . . *This taking may be done as a means of avoiding the use of the property to draw earnings or wealth out of this country to territory where it may more likely be used to assist the enemy then if it remains in the hands of this government. Or the commandeered property of a friendly alien may be used to prosecute the war.* . . ." (Emphasis added.)

Respondent paraphrases this Court's language in *Propper v. Clark*, 337 U.S. 472 (1949). (Brief, page 7.) The actual quotation appears at page 481):

> ". . . Through the Trading with the Enemy Act, in its various forms, the nation sought to deprive enemies, actual or potential, of the opportunity to secure advantages to themselves or to perpetrate wrongs against the United States or its citizens through the use of assets that happened to be in this country. . . ."

The footnote to this statement is:

> "See United States Treasury Department, *Administration of the Wartime Financial & Property Controls of the United States Government* (1942), pp. 1-4."

Nothing is said about reparations, because that was *not* one of the purposes for enacting this statute.

Our conclusion as to the purposes of the vesting power finds support in the statements made in Congress at the time the Act was originally considered and passed in 1917. See Congressional Record, Volume 55, pages 4844 and 5849.

Our position is also supported by statements made by the Alien Property Custodian in a "Bulletin of Information" issued by the Alien Property Custodian United States (Government Printing Office, Washington, 1018 p. 8) wherein it is stated that the official reasons for adopting the Trading With the Enemy Act were (1) to prevent aid or comfort to enemies or allies of enemies, and (2) to make available for war financing such property as belonged to enemies or allies of enemies.

Neither of these purposes is served by vesting future interests in real property. For example, in this case, four years after the cessation of hostilities, the expectancy interest of two old German ladies was confiscated for reasons which are not apparent and which have never been disclosed. Petitioners submit that such a vesting was neither contemplated nor authorized by the Trading With the Enemy Act.

Petitioners agree that vested property may ultimately be used for reparations. (50 U.S.C. App. §39; *Propper* v. *Clark*, 337 U.S. 472, 484 (1940).) But providing reparations was not one of the reasons for passage of the Trading With the Enemy Act; the reasons are those which this Court and the Alien Property Custodian have given, as set forth above.

Therefore, it is understandable why the President issued the statement that property acquired by enemy nationals

after December 31, 1946 was not subject to vesting. Petitioners' interest in the Bigelow Trust was not acquired until 1951, hence it was not subject to the vesting power.

We respectfully submit that this Court should grant certiorari in order to resolve the novel and substantial questions raised by this case.

Respectfully submitted,

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